

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ESTEBAN PEREZ, FELIPE GALINDO, and DELFINO LOPEZ,
Plaintiffs,

-against-

Case No. 1:17-cv-07837 (RJS)

50 FOOD CORP. (D/B/A SILO CAFE) and ANDREW SUNG
(A.K.A. HWAN SEUNG SUNG),

Defendants.

-----X
Bee Reporting Depo Center
89-00 Sutphin Boulevard
Jamaica, New York 11435

May 22, 2018
3:57 P.M.

DEPOSITION of MINCHUL

KIM, a Witness on behalf of the Defendant
herein, 50 FOOD CORP. (D/B/A SILO CAFE), taken
by the attorney for the Plaintiff, through a
Korean Interpreter, pursuant to Notice, and
held before Kathleen Anderson, a Notary Public
of the State of New York, at the above stated
time and place.

COPY

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A P P E A R A N C E S :

CATHOLIC MIGRATION SERVICES
Attorneys for Plaintiff(s)
47-01 Queens Boulevard, Suite 201
Sunnyside New York 11104

BY: MAGDALENA BARBOSA, ESQ.

VARACALLI & HAMRA, LLP
Attorney for Defendant(s)
32 Broadway, Suite 1818
New York New York 10004

BY: DOUGLAS VARACALLI, ESQ.

ALSO PRESENT:

GIRA HONG, Korean Interpreter

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IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that the sealing, filing and certification of the transcript of the within examination before trial will be and the same hereby are waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, will be reserved to the time of trial;

IT IS FURTHER STIPULATED AND AGREED that the within examination may be signed before any Notary Public with the same force and effect as if signed and sworn to before this Court.

1

2 G I R A H O N G,

3

4 The Interpreter herein, having been
5 previously sworn by Kathleen Anderson, a Notary
6 Public in and for the State of New York, to
7 interpret the questions from English into
8 Korean, and the answers from Korean into
9 English, interpreted as follows:

10 M I N C H U L K I M,

11

12 The witness herein, having been first
13 duly sworn by Kathleen Anderson, a Notary
14 Public in and for the State of New York, was
15 examined, and testified as follows:

16 DIRECT EXAMINATION

17 BY MAGDALENA BARBOSA, ESQ.:

18

19 Q What is your name?

20

21 A Minchul Kim.

22

23 Q What is your address?

24

25 A [REDACTED], [REDACTED], [REDACTED]

[REDACTED].

26

27 Q Throughout your employment at 50 Food
28 Corp, how often would you see Andrew Sung?

29

30 A For the first, up to two years or so
31 that I started working there, I always saw him
32 working with me in the store. Then it started

1 M. KIM

2 getting busy and he started trusting me more
3 and more. He would come to the store like once
4 or twice a week.

5 Q So currently you see Mr. Sung once or
6 twice a week?

7 A Actually it's maybe more like once a
8 week or once every other week.

9 Q And when you see him, is it because
10 he's visiting the store?

11 A Yes.

12 Q And when he visited Silo Café, would
13 he spend the entire day there?

14 A Just very briefly.

15 Q When you say very briefly, less than
16 an hour, a couple of hours, what do you mean?

17 A Used to be about two or up to three
18 hours, but nowadays I see him like maybe when
19 he comes, does not stay more than an hour.

20 Q When he would come to visit the café,
21 what would he do?

22 A He want to make sure that everything
23 is stocked well and this place are nice and
24 organized and occasionally he checks mail, that
25 is more or less what I saw him do.

1 M. KIM

2 Q Would he meet with you and ask you
3 questions?

4 A Normally he doesn't initiate any
5 conversation with me. It is actually I who
6 would talk to him to address some questions.

7 Q What types of questions would you ask
8 him?

9 A In case of a recent incident, it's
10 very tough to hire people, actually I had to do
11 -- I had to work in the sandwich station for
12 nearly a month. Yeah, so I told him that we
13 had to hire extra help, even if it's more cost
14 for us.

15 Q So you would talk to him about hiring
16 practices, that's one topic you would talk to
17 him about; right? Would you ever discuss with
18 him problems you had individually with
19 employees?

20 A Yes. Yeah. I mentioned before I
21 speak rather softly and not aggressively, so
22 for those incidences where I got into an
23 argument with an employee, in addition,
24 including the Felix, it would appear to someone
25 as if I was the employee hired by the person

1 M. KIM

2 I'm arguing with. So actually was not capable
3 of controlling the employees there. So that
4 was very stressful for me. So those are the
5 things I talked to Mr. Sung about.

6 Q Would Mr. Sung instruct you to do
7 things differently when engaging with problem
8 employees?

9 A Yes. He did give me tips how to
10 handle, but when I tried to address these
11 serious issues, I become very fragile, I become
12 like very -- my heart becomes very vulnerable
13 towards them.

14 Q Besides Mr. Sung's weekly or biweekly
15 visits, would you ever speak with Mr. Sung over
16 the phone?

17 A Yes.

18 Q How often would you speak with Mr.
19 Sung over the phone?

20 A Maybe two to three times a week.

21 Q What kind of things would you
22 typically discuss during these phone calls?

23 A The more important reason to talk
24 with him over the phone would be when I have to
25 spend large amount of money, for example, if I

1 M. KIM

2 need to repair a refrigerator and it was, say,
3 about less than a hundred dollar, I would not
4 need his authorization, but if it was a lot
5 higher than that, like 500 or more, I would
6 need to get his permission.

7 Q Have you ever fired an employee?

8 A Yeah, I do think I have. One or two
9 times.

10 Q Did you discuss this before, did you
11 discuss this with Mr. Sung before actually
12 firing the employees?

13 A In those circumstances I had
14 conferred with Mr. Sung many days before I
15 would actually fire anyone because I would
16 speak to Mr. Sung, I would tell him if the
17 situation doesn't get corrected by a certain
18 employee, you would decide to -- you would
19 just fire that person.

20 Q Did he authorize you to fire these
21 people?

22 A Yes.

23 Q And you needed to speak with him
24 first before you actually fired these
25 employees?

1 M. KIM

2 A Yes.

3 Q When was the last time Mr. Sung
4 visited Silo Café?

5 A I think it was last Monday.

6 Q How long was he there for?

7 A I'm not too sure, maybe about three
8 hours.

9 Q Did the both of you speak during this
10 visit?

11 A Yes.

12 Q What did you discuss?

13 A Because of the slow business we were
14 very concerned. So we discussed about how we
15 going to keep our menu or if we should modify
16 it. And I complained to Mr. Sung that we need
17 to hire another help, but because we are not
18 able to, it's becoming very tiring and
19 stressful for me. And I was very worried about
20 one thing and that is I am scheduled to go to
21 Korea in July and I had planned on training
22 somebody before I leave and that wasn't going
23 to be very feasible, so I was upset -- I'm
24 sorry, I was stressed out and expressed that to
25 Mr. Sung.

1 M. KIM

2 Q Do you need Mr. Sung's authorization
3 to hire an additional employee?

4 A Well, that is not really the case.
5 As I mentioned this too, before, that he -- if
6 I was going to hire someone who is -- whose pay
7 would be comparable to who we are currently
8 using in the same capacity, I would not need
9 Mr. Sung's authorization, but if I am asked to
10 pay a lot more than the current worker in the
11 same capacity, I will need to get an
12 authorization from Mr. Sung.

13 Q It sounds to me like you're
14 describing a situation where presently you need
15 more help at the café; is that right?

16 A Yes.

17 Q So why don't you hire somebody?

18 A As I told you, it's hard to find new
19 help. And then it's often the case that a
20 newly hire would come to work one day and then
21 just not show up the next day.

22 Q During Mr. Sung's visits to Silo
23 Café, have you ever observed him speaking
24 directly with any of the employees?

25 A Other than myself?

1 M. KIM

2 Q Yes.

3 A My answer would be no, because even
4 to myself he wouldn't really say anything, he
5 would just maybe smile at me. That's it.

6 Q So you're telling me when Mr. Sung
7 comes to visit, he just smiles at you, he
8 doesn't actually talk to you about business
9 issues?

10 A That is correct. As I said, he is
11 not at all a talkative man.

12 Q So you don't have conversations when
13 he visits you?

14 A What I'm saying is that we do have
15 conversations, but it's never he who comes to
16 me to start a conversation. It's only when I
17 have an issue or something to address to him,
18 then we would have a conversation.

19 Q And is it your testimony that you
20 have never seen Mr. Sung interact at all with
21 any other individuals at Silo Café other than
22 yourself?

23 A Nearly none. Nearly none because it
24 could be that he would come in to say hi, he
25 comes in and say hi, but he would leave and no

1 M. KIM

2 one would know that he had left.

3 Q We discussed earlier the Silo Café
4 that's located on East 32 Street, is that café,
5 more or less, the same size as the Silo Café
6 where you work?

7 A I say similar or maybe a bit larger,
8 tiny bit.

9 Q Who is currently the manager of that
10 Silo Café?

11 A Danny.

12 Q Do you know what Danny's last name
13 is?

14 A I don't know.

15 Q Is Danny just a name he goes by at
16 work or does he have another name?

17 A We have -- there's really no
18 interactions between the two stores, two Silo
19 Cafés, so I don't know about that.

20 Q Okay. Thank you. But do you know if
21 Danny has another name?

22 A No, I don't know.

23 Q Have you known any of the other
24 managers at the Silo Café at 32 Street?

25 A I don't, I real don't. As far as I

1 M. KIM

2 understand, there have been so many turnovers,
3 at least five managers have changed.

4 Q So you're saying that during your
5 employment with Silo Café, you have met around
6 five people that have managed the Silo Café at
7 East 32 Street?

8 A Yes.

9 Q Did Mr. Sung ever directly manage the
10 Silo Café at East 32 Street?

11 A I don't know that.

12 Q Are you aware of whether Mr. Sung has
13 any family members that work at the Silo Café
14 at East 32 Street?

15 A I don't know.

16 Q You indicated earlier that perhaps
17 you visited the location at East 32 Street
18 maybe around ten times; is that right?

19 A Yes.

20 Q Have you ever worked at that
21 location?

22 A No.

23 Q Have you ever filled in for anybody
24 at that location?

25 A No.

1 M. KIM

2 Q Have you ever observed any documents
3 used at that location?

4 A No.

5 Q Does that Silo Café have a similar
6 setup, does it have a buffet with different
7 food stations?

8 A Yeah, I believe so.

9 Q Do you know whether the Silo Café at
10 East 32 Street uses the same vendors as the
11 Silo Café at 805 Third Avenue?

12 A I assume there were quite a few that
13 we are using mutually, but there are quite a
14 lot that they are using independent of what we
15 are using at 85 Street, I mean 305, my store.

16 Q You mentioned earlier in the day that
17 you met Mr. Sung through someone who you go to
18 church with; is that right?

19 A Yes.

20 Q And remind me of that person's name
21 again?

22 A Kang, K A N G, M Y O, last name N A
23 H.

24 Q And it was Mr. Nah who introduced you
25 to Mr. Sung?

1 M. KIM

2 (Witness nods.)

3 Q Prior to that introduction, had you
4 ever spoken with Mr. Sung?

5 A No.

6 Q Prior to that introduction did you
7 know anything about Mr. Sung?

8 A None.

9 Q Besides the Silo Café where you work
10 and the Silo Café located at East 32 Street, do
11 you know how else Mr. Sung spends his time,
12 what he does for work?

13 A He doesn't mention anything regarding
14 that kind of thing, so I wouldn't know. I
15 really don't know anything about that for sure.

16 Q Okay. Do you know whether he is
17 involved in any other businesses in New York
18 City?

19 A I don't know.

20 Q Have you ever heard discussions or
21 rumors about him owning any other business in
22 New York City like a deli or restaurant?

23 A No.

24 Q You testified earlier that you had a
25 discussion with Mr. Sung about this lawsuit in

1 M. KIM

2 or about October of 2017; is that right?

3 A Yes, when I received the paper about
4 the lawsuit.

5 Q After that discussion in October of
6 2017, when was the next time that you guys
7 discussed this lawsuit?

8 A My answer is no, and I do want to say
9 that it was the first time in October 2017 upon
10 receiving these -- the litigation papers, he
11 said, Mr. Sung said not to be concerned about
12 this matter and since then, he mentioned
13 nothing more about this lawsuit. You see my
14 address here, I provided my address because Mr.
15 Sung said he would need it, and other than
16 that, I know nothing more about the lawsuit.

17 Q But you did have a discussion with
18 him regarding your notice to appear at this
19 deposition; right?

20 A Then I learned when I received,
21 learned about attending deposition, when I was
22 served with this in person, prior to then Mr.
23 Sung mentioned nothing about me going to a
24 deposition.

25 Q After you received the notice to

1 M. KIM

2 appear for this deposition, did you speak to
3 Mr. Sung about this deposition and in general
4 about this lawsuit?

5 A Yes, I did ask him what I'm supposed
6 to do and he said, you will go to deposition
7 but just tell the truth, whatever you know.

8 Q Did you speak with anyone else about
9 appearing at the deposition today?

10 A My family knows and the cashier who's
11 actually working now, waiting for me to return
12 to the store and Felix knows. Even though I
13 didn't mention it, he managed to find out.

14 Q Okay. Did you have a conversation
15 with Mr. Varacalli about appearing at the
16 deposition today?

17 A No. As I said, I prepared nothing. I
18 did work at the Silo Café store for nine years.
19 And I was stating the truth as I saw and
20 experienced.

21 Q Okay. Are you aware that there was a
22 settlement conference in this matter several
23 weeks ago?

24 A Yes, I did because Felix did not show
25 up for work.

1 M. KIM

2 Q Besides that, did anyone -- did
3 anyone speak to you about the settlement
4 conference?

5 A No one did, and I don't speak
6 Spanish. It appears that Felix spoke to other
7 Spanish speaking employees. I'm not sure,
8 could have just well been.

9 Q Did Mr. Sung have a discussion with
10 you about the settlement conference?

11 A He did.

12 Q What did he say?

13 A (Speaking in English) he said to
14 me --

15 Q In Korean.

16 A Mr. Sung said that he's going to
17 stick this out, this lawsuit, because while we
18 may be missing some important documents, we did
19 submit what we did to the best we can.

20 Q Okay. Would you say that you have a
21 working knowledge of the requirements under the
22 New York labor law?

23 A The truth is I really do not.

24 Q Did anyone ever advise you of any
25 changes to the New York labor law in the last

1 M. KIM

2 two or three years?

3 A I do not think so. Are you referring
4 to paid sick days?

5 Q Right now I am not. I'm referring to
6 requirements employers have regarding wages and
7 hours under the New York labor law?

8 A Yeah. I did mention that notice has
9 been was posted in the store.

10 Q About the minimum wage and overtime,
11 is that what you're talking about?

12 A Yes. In fact, I had visited the
13 labor department website and had it printed
14 out.

15 MS. BARBOSA: Okay. Thank you.

16 Mark this as Plaintiff's Exhibit 8.

17 (Whereupon, the above mentioned
18 document was marked as Plaintiff's
19 Exhibit 8 for identification, this date
20 by the Reporter.)

21 Q Please take a look at what has been
22 marked as Plaintiff's Exhibit number 8. It's
23 also identified by bates stamp P000007. Do you
24 recognize this document?

25 (Witness peruses document.)

1 M. KIM

2 A Yes.

3 Q What is this?

4 A This was given to certain employees
5 at their request and I had to write certain
6 dollar amount at their request.

7 Q Is this your signature at the bottom?

8 A Yes.

9 Q And would it be correct to say that
10 you signed this on May 19, 2016?

11 A Yes.

12 Q Who typed up this letter?

13 A I did sign.

14 Q And what was the purpose of this
15 letter?

16 A I was told that this had to be
17 submitted to the hospital for deductibles. For
18 less deductibles that they were looking for.

19 Q Did you refer to any documents in the
20 office at Silo Café in order to write this
21 letter?

22 A This is only when needed
23 occasionally, not monthly, so I would merely
24 change, alter the name and the amount for each
25 occasion.

1 M. KIM

2 Q Thank for your that information, but
3 you didn't respond my question.

4 My question was, did you refer to any
5 documents in the office at Silo Café, any
6 employment documents in order to write this
7 letter for Mr. Lopez?

8 A Actually it was written, prepared
9 based on whatever he wanted me to write. You
10 can see that this is the template right here,
11 the only sentence, and I had only changed the
12 name each given time.

13 Q Is the information in this letter
14 accurate?

15 A Well, in fact it is not accurate,
16 because he was not to get, he did not get
17 \$350.00. But he wanted me to write \$350.00.

18 Q So that amount is not accurate?

19 A No.

20 Q Is there anything else in the letter
21 that's inaccurate?

22 A Yeah, 2015, yeah. I just wrote that
23 as he wanted it, because I knew that the
24 hospital would know the accurate year that
25 applies for his needs.

1 M. KIM

2 Q Was it your understanding that Mr.
3 Lopez was paid a weekly salary?

4 A Yes.

5 Q So Mr. Lopez understood that he
6 received a set weekly salary on a weekly basis;
7 is that right?

8 A Yes.

9 Q Do you have any idea what the
10 correct, his correct salary would have been if
11 you had referred to the correct documentation
12 in the café?

13 A I would use to get this information
14 entirely correct, I would have to refer to the
15 period which he was paid and I would be able to
16 obtain the correct information about him.
17 Again, this is the amount was based on what he
18 wanted me to write.

19 MS. BARBOSA: Mark this as
20 Plaintiff's Exhibit 9.

21 (Whereupon, the sick leave policy
22 was marked as Plaintiff's Exhibit 9 for
23 identification, this date by the
24 Reporter.)

25 Q Please take a look at Plaintiff's

1 M. KIM

2 Exhibit 9, also identified as bates stamp

3 P000004. Do you recognize this document?

4 (Witness peruses document.)

5 A Yes.

6 Q What is it?

7 A It's regarding paid sick/leave
8 policy.

9 Q Okay. Can you identify whose
10 signature is at the bottom, it has employee
11 name?

12 A By Felix Galindo.

13 Q Do you know who gave Mr. Galindo this
14 document to sign?

15 A I did.

16 Q And why did you give him this
17 document to sign?

18 A First of all, Mr. Sung said it has to
19 be maintained in the premises and that it
20 should be given to each employee because
21 employee should be made aware of these
22 policies.

23 Q So Mr. Sung gave you -- instructed
24 you to give this document to the employees at
25 Silo Café; is that right?

1 M. KIM

2 A Yes.

3 Q Very good. Do you have any reason to
4 believe the Plaintiff, Esteban Perez, may not
5 be considered somebody who is credible, who is
6 truthful?

7 A Not with Esteban, no.

8 Q So you consider him to be a truthful
9 person?

10 A In my opinion, I did not experience
11 dishonesty from that guy.

12 Q Okay. What about Delfino Lopez, is
13 there any reason why Delfino Lopez would not be
14 considered as someone who is credible?

15 A With Delfino spoke nearly none, he
16 did not speak much at all. My initial
17 impression of him was not that good at all.

18 Q Why is that?

19 A Because he was always frowning, not
20 saying anything. And even when he spoke, he
21 would not speak kindly. But with him he was
22 always on time, coming to work, nearly never
23 late and he worked hard.

24 Q There's no reason that you can think
25 of that Delfino Lopez would not be a truthful

1 M. KIM

2 person; is that right?

3 A Yes, I don't think badly of him at
4 all.

5 Q We were discussing Silo Café's sick
6 leave policy when we were discussing
7 Plaintiff's Exhibit 9, do you recall when Mr.
8 Sung asked you to distribute this sick leave
9 policy to the employees?

10 A I don't know. I don't remember,
11 excuse me.

12 Q The date of Mr. Galindo's signature
13 on Plaintiff's Exhibit number 9 looks to me
14 like July 6, 2016, is that the date that you
15 see as well?

16 A I don't have independent
17 recollection.

18 Q Okay. Do you recall whether there
19 was a sick leave policy prior to 2016?

20 A So I don't really recall the date,
21 but through some occasion I found out about
22 this and it was this finding out, made it our
23 practice to sign and date it and this should be
24 to people, distributed to people.

25 Q Is it Mr. Sung who told you about

1 M. KIM

2 this need to have this policy?

3 A Well, when Mr. Sung brought this to
4 me, I thought that that was the reason so, you
5 know, I have been maintaining it the way I
6 have.

7 Q Is it Mr. Sung who instructed you to
8 maintain this policy at Silo Café?

9 A I guess that's what he meant for me
10 to do when he handed this to me, to keep it in
11 the business.

12 Q Thank you. Besides sick days, does
13 50 Food Corp provide any other benefits to its
14 employees?

15 THE INTERPRETER: Besides what?

16 Q Sick days, does 50 Food Corp provide
17 any other benefits to its employees?

18 A The way we understood the sick day
19 would be -- we thought that if one employee has
20 not used up his sick day, by the end of the
21 year, we would have to reimburse him, the
22 employee. And -- but prior to this occasion we
23 used to make it practice to pay at least half
24 day during the holidays was slowing down in
25 business, it became unreasonable to pay the

1 M. KIM

2 holidays and for the sick day, especially
3 because the way our business is located, where
4 other business is located, so starting at
5 certain time to which I do not recall, Mr. Sung
6 stopped paying holidays.

7 Q Was it Mr. Sung's decision to stop
8 paying holidays?

9 A Yes. Because the slow down of
10 business was the big reason.

11 MS. BARBOSA: Okay, thank you. I'm
12 just going to go off the record for a
13 moment.

14 (Whereupon, an off the record
15 discussion was held.)

16 (Whereupon, a short recess was
17 taken, time noted: 4:45-5:04 PM.)

18 Q I'm going to redirect everyone's
19 attention to Plaintiff's Exhibit number 5.
20 Plaintiff's Exhibit number 5 is this document
21 with Felix Galindo's name on it, the payment
22 report 2013 is in the top left corner.

23 (Witness peruses document.)

24 Q I just want to get a little bit more
25 information about the process in filling out

1 M. KIM

2 these payment reports.

3 The first column entitled, week
4 ending, so is that Monday through Friday
5 typically the start time and the end time?

6 A Yes.

7 Q And then you would actually pay out
8 the wages and ask the employees to sign the
9 payment report on the following Wednesday, is
10 that right, Wednesday or Friday?

11 A The recipients' signatures are
12 requested upon handing over the wage.

13 Q That I understand. I just want to
14 make sure I understand that the payment report
15 is for Monday through Friday; is that right?

16 A Yes.

17 Q So if we were to look at a calendar
18 of January 2, 2013, I assume January 2 would be
19 a Monday?

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q I want to go back to have a better
24 understanding of how you calculated regular
25 hours in these payment reports.

1 M. KIM

2 If an employee, in 2013, I understand
3 that employees worked five days a week, nine
4 and a half hours per day; is that right? So I
5 think that's 47 and a half hours a week; is
6 that right?

7 A Yes.

8 Q So if an employee worked nine and a
9 half hours per day, Monday through Friday, and
10 they worked those exact hours that week, what
11 number would you enter to designate regular
12 hours in this payment report?

13 A In this case an employee worked for
14 three days, but only two days, excuse me, three
15 days from January 2, January 3, January 4. So
16 it would then be forty hours under the regular
17 hours column.

18 Q If it was forty hours under the
19 regular hours column, why was the number 24
20 entered in this payment report?

21 A It would be forty hours, but in this
22 particular document, the work was for three
23 days only.

24 Q Okay. So is it for this particular
25 week, you entered 24 because the worker worked

1 M. KIM

2 eight hours each day and you were trying to
3 illustrate that the employee worked eight hours
4 for three days, so that's 24 hours?

5 A Correct. Correct. Again, this
6 particular employee worked three days only,
7 eight hours a day.

8 Q So do you understand regular hours to
9 be a certain amount of hours worked per day?

10 A Yeah, I'm referring to someone
11 working eight hours a day. And in case a
12 person, an individual worked more than eight
13 hours a day, he or she will be paid on the
14 overtime rate.

15 Q Okay. So your understanding of the
16 way overtime works is that an employee gets
17 overtime if they work more than eight hours a
18 day?

19 A Yes, that was my understanding.

20 Q Okay. The plaintiffs in this case,
21 did you understand that they received a set
22 weekly salary or a specific hourly rate during
23 their employment?

24 A I don't know what they were expecting
25 their payment should be. So how -- what they

M. KIM

1
2 thought, what the employees thought they should
3 be getting on weekly basis, a specific amount
4 or would it be based on the total amount of
5 time they worked taking into overtime rate, I
6 really don't know how they regarded their
7 payment should be. All I could do was to enter
8 accurate information as to how many days work
9 and how many hours they actually worked and if
10 any overtime rate applied, this was explained
11 to them, explained to each employee when I
12 handed over and they can see for themselves how
13 their wage was exactly calculated.

14 Q You indicated earlier that you hired
15 the Plaintiff, Esteban Perez; is that right?

16 A Yes.

17 Q And when you hired him, what did you
18 tell him about what his salary would be?

19 A So initially I remember explaining to
20 him what he can expect to receive weekly basis.
21 For an example, in this case it's \$399.79, so
22 for the purpose of simplification (sic), I would
23 tell him \$400 weekly is what he's expected to
24 earn, but when I hand over the payment report
25 to each employee, I would explain how his --

1 M. KIM

2 their total weekly wage has been calculated, of
3 course, based on the hours they work, if any
4 overtime applied or taking into consideration
5 any deductions for breaks or what else should
6 be, whatever should be there so that employee
7 could see exactly what and how he was paid.

8 Q Are you telling me that each time you
9 asked an employee to sign this payment report,
10 that you would have a discussion with them
11 explaining to them how their salary was
12 calculated?

13 A I did not. Only couple of times I
14 did. But not every single time. Because there
15 were no complaints or questions about it. It
16 was self-explanatory.

17 Q Okay. Just to confirm and make sure
18 I understand correctly, when you hired Mr.
19 Perez and you were explaining to him what his
20 salary would be, you told him that he should
21 expect to receive a weekly salary, I believe
22 you said \$400; is that right?

23 A I don't know how to best explain what
24 I told him. In case of what Mr. What?

25 Q Mr. Perez?

1 M. KIM

2 A Mr. Perez, normally any new hired
3 employee, general, were really mainly
4 interested in knowing what they will be earning
5 weekly. So this is generally what I say to new
6 hire people, that at the café we have everybody
7 working eight hours a day, but if he work nine
8 and a half hours a day, one and a half hour
9 will be calculated based on overtime rate and
10 working five days like that, they can expect
11 certain amount of money and I mentioned that
12 amount based on the hourly rate we had agreed
13 upon. And I definitely did explain to each
14 recipient, especially for the new hire, when I
15 presented the payment report, the content of
16 each calculation.

17 MS. BARBOSA: I don't have any
18 further questions.

19 (Continued on the next page.)
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M. KIM

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MR. VARACALLI: Just one thing from

3

my end, the defendant corporation, 50

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Food Corp., reserves the right to review

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answers and make corrections. That's

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all.

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(Whereupon, the Examination Before

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Trial of this witness was concluded at

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5:18 P.M.).

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I, MINCHUL KIM, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of May 22, 2018; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

MINCHUL KIM

Subscribed and sworn to
before me this _____ day
of _____, 2018.

NOTARY PUBLIC

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I N D E X

3

WITNESS

BY

PAGE

4

MINCHUL KIM

Ms. Barbosa

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E X H I B I T S

7

PLAINTIFF'S

DESCRIPTION

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Letter

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Sick leave policy

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C E R T I F I C A T E

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I, KATHLEEN ANDERSON, a Notary Public of
the State of New York, do hereby certify

5

6

That the testimony in the within
proceeding was held before me at the aforesaid
time and place

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8

9

That said witness was duly sworn before
the commencement of the testimony, and that the
testimony was taken stenographically by me,
then transcribed under my supervision, and that
the within transcript is a true record of the
testimony of said witness.

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I further certify that I am not related to
any of the parties to this action by blood or
marriage, that I am not interested directly or
indirectly in the matter in controversy, nor am
I in the employ of any of the counsel.

20

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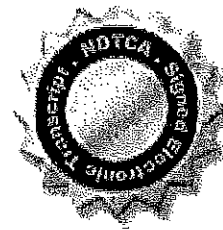
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25

IN WITNESS WHEREOF, I have hereunto set my
hand this 14th day of June, 2018.

Kathleen Anderson

KATHLEEN ANDERSON



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